In connection with the instrument before me no attempt has been made to show a prior transaction passing the property i.e. creating title in the vendee. It is simply argued that there has been a sale but that the property cannot pass until registration. I cannot accept that view as being sound. Registration though impliedly, if not actually, made compulsory in this case cannot create a title. All that registration may do is to prevent until the registration the vendee doing acts that he would as vendee otherwise be entitled to do, and by subsection 4 (a) of section 145 the Commissioners are placed in a much more satisfactory position than they would be by the registration of the ordinary form of conveyance.

In my opinion the Trust by declaring they have acquired the specified lands are not merely acknowledging as a fact that a right is vested in them, but are intending to cause a change of legal relationship in respect of the specified lands. Further they are compelled by law to make this declaration and the declaration, in my view, is the only repository and the appropriate evidence of the transaction. I hold it to be a conveyance.

Solicitors for the Appellant—

Braddell Bros.

[ORIGINAL CIVIL JURISDICTION]

HOWES, AG. C. J.

April 14, 1937.

SOH AH SUAN ON BEHALF OF HIMSELF AND ALL OTHER THE BUS-OWNERS EXCEPT THE DEFENDANTS WHO HAVE HITHERTO BEEN OPERATING UNDER THE COMMON NAME OF "KEPPEL BUS CO." .....Plaintiff

vs.

1. **ANG HUAT CHWEE**
2. **ANG AH LECK**..... Defendants

[SINGAPORE SUIT No. 385 of 1936.]

Company—unregistered association of more than twenty persons—association carrying on business with acquisition of gain as object—illegality—right of members to an account.

"The Keppel Bus Company" was an association of more than twenty bus-owners carrying on business having for its object the acquisition of gain within the meaning of Section 4 (2) of the Companies Ordinance (Cap. 151). The association was not registered under that Ordinance and was therefore an illegal association. The defendants were the manager and treasurer respectively of the association. In an action by a member on behalf of himself and other members except the defendants, claiming an account of all moneys received by the defendants and other relief,

Held, that notwithstanding that the Association was illegal under the Companies Ordinance, the Court was not debarred from affording relief to the plaintiff on behalf of himself and all other members except the defendants by granting an account.

Smith for the plaintiff.

C. J. Koh for the defendants.

Cur. Ad. Vult.

HOWES, AG. C.J.—In this matter, by a consent order made by de Buriatte, J. on the 15th March 1937, it was ordered that the following preliminary point of law be tried before this Honourable Court namely:—

> "If the Keppel Bus Company referred to in Paragraph 4 of the Statement of Claim herein is an illegal association by reason of its being composed of more than twenty persons then is this Honourable Court debarred from affording relief to the plaintiff on behalf of himself and all other bus owners except the defendants, Ang Boon Siew, Ong See Neo and Tan Thean Neo who have hitherto been operating under the common name of Keppel Bus Company, by granting an account."

The plaintiff claims on behalf of himself and all other the bus-owners except the defendants, Ang Boon Siew, Ong See Neo and Tan Thean Neo who have hitherto been operating under the name of "Keppel Bus Co.":—

(a) An account of all moneys received by the defendants from the plaintiff and all other the bus-owners aforesaid and of their application thereof.
(b) Inquiry as to any property of the said "Keppel Bus Co." in the defendants' custody available for the benefit of all the said bus-owners.
(c) Administration of the assets of the said "Keppel Bus Co."
(d) Such other relief as the Court shall think just.
(e) Costs.

The defence is, that the claim is bad in law and discloses no cause of action for accounts and inquiries against the defendants, on the grounds that the Society or association of bus-owners as alleged to exist and known as "Keppel Bus Company" is composed of more than twenty persons, and that such society or association not being registered under the Societies Ordinance (Chapter 217) and or the Companies Ordinance (Chapter 151) is unlawful.

It appears to be common ground that "the Keppel Bus Company" is an association of more than twenty bus-owners, and was formed for the purpose of carrying on a business "that has for its object the acquisition of gain by the company, association, or partnership, or by individual members thereof" within Section 4(2) of the Companies Ordinance (Chapter 151); and that since it has not been registered under that Ordinance, the "Keppel Bus Company" is an illegal association. This, as above stated, is the defendants' answer to the claim.

Mr. Smith, for the plaintiff, relying on the case of *Greenberg* v. *Cooperstein* (1926) Ch. 657, argues that even if this "Company" was an illegal association by reason of its being an un-

registered association of more than twenty persons carrying on a business having for its object the acquisition of gain, the Court is not debarred from affording relief to the members asking for a return of money paid into the hands of agents for application for the illegal purpose, by granting an account; which is all the plaintiff now seeks.

Mr. Koh, for the defendants, has referred to numerous cases, including local decisions.

Of these, *Tan Teck Hee and others* v. *Cheng Tiew Peng* (2 F.M.S.L.R., 161) was a claim by a partnership which consisted of twenty-five persons which had not been registered under the Companies Enactment. It was held by Braddell J. C. that the partnership, being one which is forbidden by the law, was void, and the partnership was not entitled to maintain an action. In another case *Tham Choon Ng.* v. *Hup Lee Chong and Sum Yik Chow* (1 F.M.S.L.R. 364) it was held by the Court of Appeal, that the contract sued on being a contract of partnership, in which there were more than twenty partners, was prohibited by section 4 of the Companies Enactment 1917, and was therefore void within the meaning of section 23 of the Contract Enactment, and one which could not be sued upon.

The present claim is, however, not based on contract; but the plaintiff seeks an equitable remedy.

The case of *Sykes* v. *Beadon* (1879) 11 Ch.D., 170 to some extent, supports the defendants' contention.

In that case, Jessell, M.R. stated at page 193:—

> "Now the authorities on the subject seem to be quite plain when you come to examine them. They are really to this effect, that you cannot ask the aid of a Court of Justice to carry out an illegal contract; but in cases where that contract is 'actually at an end, or is put an end to, the Court will interfere to prevent those who have, under the illegal contract. obtained money belonging to other persons on the representation that the contract was legal, from keeping that money."

and at page 196:—

> "It is no part of the duty of a Court of Justice to aid either in carrying out an illegal contract, or in dividing the proceeds arising from an illegal contract, between the parties to that illegal contract. In my opinion, no action can be maintained for the one purpose more than the other."

The learned Master of the Rolls concluded his judgment (page 197) with these words:

> "It does not follow that you cannot, in some cases, recover money paid over to third persons in pursuance of the contract; and it does not follow that you cannot, in other cases, obtain even from the parties to the contract, moneys they have become possessed of by representations that the contract was legal, and which belonged to the persons who seek to recover them."

In this particular case, not only was the association illegal on the ground that it consisted of more than twenty persons and had not been registered; but also it appeared that the mode of distribution was a lottery, and therefore illegal under the Lottery Act.

In the present case, there is no suggestion that the object of the Keppel Bus Company was illegal; its illegality arose from the fact that it was an association of more than twenty persons for gain, not registered under the Companies Ordinance.

It is admitted that the defendants were respectively the manager and treasurer of an illegal association, viz., the Keppel Bus Co., and as such received the moneys in respect of which the account is sought.

In Vol. 1 of *Smith's* Leading Cases (13th Edition) page 444, it is stated:— "Further, if the money reach the hands of any person who can be considered to receive it as agent, for the party entitled to it under the illegal contract, such agent cannot set up the illegality as an answer to his principal's claim" (Various cases follow in support of this proposition—) "But it is otherwise if such receipt was illegal and part of an illegal transaction in which both the principal and agent were concerned."

In *Halsbury*, 2nd Edition, Vol. 5 para. 1457, page 843 it is stated:—

> "Persons subscribing to the formation of a company, the agreement to form which is illegal, may, however, recover the money before it is actually applied to the illegal purpose, and the Court will order any persons who have received the money to render an account; but the question, even now seems open whether the Court will assist members of illegal companies to recover their subscriptions from the persons who have been the recipients of them, and if so, by what means."

The basis of the plaintiff's claim in the present suit, is for all practical purposes, identical with that in *Greenberg* v. *Cooperstein*, (1926) Ch. 657. The defendants therein were the treasurer and secretary of a club called the "Pelham Club," the plaintiffs were members of the club, and sued on behalf of all members of the club (other than the defendants). The "club" was held by Tomlin J. to be an illegal association, owing to the fact that it consisted of more than twenty persons, having for its object the acquisition of gain, and had not been registered as a company under subsection 2 of section 1 of the Companies (Consolidation) Act 1908.

In the course of his Judgment, Tomlin, J., stated at page 665:—

> "Having come then to the conclusion in the present case that the Pelham Club is an illegal association I have next to consider that relief can be given in a case of this sort..... I do not myself believe that the law is so powerless that when money is in the hands of persons who have received it for application for an illegal purpose, it cannot protect the contributors or enable them to recover it before it has been applied for this illegal purpose." (The learned Judge then considered other reported cases). Three of these cases, he continued: "were all cases where an illegal association was seeking to recover money lent by it; and it was necessarily held that the association being illegal the contract with it could not be enforced by it. It is a different case where those who have subscribed money for an illegal purpose come requiring the agents in whose hands it is and who were to apply it for that purpose and have not done so, to return it to them. I am happy to think that the law is not so feeble that it cannot protect the subscribers by ordering an account: but in saying this I am expressing no opinion as to what will take place after the account has been taken and by what means if any the defendants may discharge themselves of the money they have received."

The correctness of the above decision has never been questioned; and with the greatest respect, it seems to me not only good law but common sense.

In a somewhat similar case, *Marrs and others* v. *Thompson*, (1902) 18 T.L.R., page 555 the Court of Appeal in England held that the trustees of an unregistered friendly society consisting of more than twenty members were entitled to sue the Society's treasurer for the recovery of money of the Society in his hands; but in that case, there appeared to be some doubt as to whether the Society was one which needed to be registered under the Companies Act.

I therefore hold on the preliminary point of law, that this Court is not debarred from affording relief to the plaintiff on behalf of himself and all other busowners except the defendants, Ang Boon Siew, Ong See Neo and Tan Thean Neo who have hitherto been operating under the common name of "Keppel Bus Company," by granting an account.

I order that the costs of the trial of this preliminary issue be the plaintiffs in any event.

Order accordingly.

Solicitors for the Plaintiff—
Donaldson & Burkinshaw

Solicitors for the Defendant—
Aitken & Ong Siang.

[ORIGINAL CIVIL JURISDICTION]
McELWAINE, C.J.
March 31, 1937.

SYED ABDULRAHMAN BIN SHAIKH ALKAFF v. MUNICIPAL COMMISSIONERS.

[SINGAPORE ORIGINATING MOTION No. 17 of 1937.]

Municipal Ordinance (Cap: 133) ss. 58 (1) (j), 143 (1) m.—Power to make building by-laws—Scope of the powers—Definition in Ordinance of "erect"—Applicability of, to by-laws.

By the Municipal Ordinance (Cap: 133) s. 58 (1) (j) power is conferred on the Municipal Commissioners to make by-laws for the regulation of buildings and building operations. By s. 143 (m) it is provided that such power shall include power to make by-laws for "the construction and level of arcades or pavements for the use of foot passengers along that part of any building which abuts on a street." The Singapore Municipal Commissioners under these powers passed a by-law stipulating that any person "who shall erect a building which abuts on any street or road shall provide a verandah-way or an uncovered foot-way of the width of at least seven feet.."

Held (1) the by-law was *intra vires*; (2) the word "erect" in the by-law bore the meaning assigned by s. 144 (10) notwithstanding that it was made under another section and that the statutory definition of "erect" laid down by s. 144 (10) was not confined to s. 144.

Order Nisi to show cause why a Writ of Mandamus should not issue to the Municipal Commissioners, Singapore, calling upon them to show cause why they should not consider certain building plans submitted by the prosecutors, the partners of Messrs. Alkaff & Co. without reference to the said building by-law, discharged.

The notes and arguments are sufficiently set out in the judgment.

O'Connor for the Municipal Commissioners of Singapore showed cause.

Walters for the partners of Alkaff & Co. in support of the Order Nisi.

Cur. Ad. Vult.

McELWAINE, C.J.—On the 16th November, 1936 an order was made by this Court calling upon the Municipal Commissioners of Singapore to shew cause why a Writ of Mandamus should not issue directing them to consider certain building plans without having regard to section 143 (1) (m) of the Municipal Ordinance or to By-law No. 121 of the Building By-laws.

Messrs. Syed Abdulrahman bin Shaikh Alkaff and Syed Aboobakar bin Hussain Alkaff whom I shall hereafter refer to as the Relators are owners of a large number of houses in Singapore. In 1936 they submitted plans under section 144 of certain alterations which they desired to make in a building owned by them which fronts on De Souza Street, and extends over the land separating De Souza Street from Almeida Street (which is roughly parallel to De Souza Street) on which latter street the East side of the building fronts.

The plans related to alterations in the ground floor outer wall fronting on De Souza Street. The present outer wall is so constructed that the weight of the upper storey is carried on pillars, the space between the pillars being filled